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International Court of Justice

H2756 - 0002

DISSENTING OPINION

of the Soviet Member of the International Military Tribunal, Major General Jurisprudence I.T. Nikitchenko on the Judgment concerning defendants Schacht, von Papen, Fritzsche and Hess and the accused organizations: Reichscabinet, General Staff, and OKW.

The Tribunal decided:

a) to acquit the defendants Hjalmar Schacht, Franz von Papen and Hans Fritzsche;

b) to sentence the defendant Rudolf Hess to life imprisonment;

c) not to declare criminal the following organizations: the Reichscabinet, General Staff and OKW.

In this respect I can not agree with the decision adopted by the Tribunal as it does not correspond to the facts of the case and is based on incorrect conclusions.

1. THE UNFOUNDED ACQUITTAL OF DEFENDANT SCHACHT

The evidence, submitted to the Tribunal in the case of Schacht, confirms the following facts:

a) Schacht established contact with Goering in December 1930 and with Hitler at the beginning of 1931. He subsequently established contact between the leadership of the Nazi Party and the foremost representatives of the German industrial and financial circles. This, in particular, is confirmed by the testimony of Witness Severing (Transcript, Afternoon Session, 23 May 1946; also US-615).

b) In July 1932 Schacht demanded that Papen resign his post as Reich Chancellor in favor of Hitler. This fact is confirmed by Papen's testimony at the preliminary interrogation and by Schacht's own testimony in Court (Transcrip, Afternoon Session, 2 May 1946.

c) In November 1932, Schacht collected signatures of German industrialists, urging them to come out for Hitler's appointment as Reich Chancellor. On November 12, 1932, Schacht wrote to Hitler:

"I have no doubt that the way we are directing the course of events can only lead to your appointment as Reich

H2756 - 0003

Chancellor. We are trying to secure a large number of signatures among the industrial circles to ensure your appointment to this post." (EC-[illegible]6, US-773, PS-3901, US-837).

d) In February 1933 Schacht organized the financing of the pre-election campaign conducted by the Nazy Party, and demanded at the conference of Hitler and Goering with the industrialists, that the latter provide three million marks (D-203). Schacht admitted in Court that he had pointed out the necessity for providing the Nazi leaders with this sum (Transcrip, Afternoon Session, 3 May 1946), while the Defendant Funk and the former member of the management of "I.G. Farbenindustrie" Schnitzler, who were present at this conference, both confirmed that it was Schacht who was the Initiator of the financing of the pre-electior carpaign. (Transcript 4 July 1946, and EC-439, US-618).

e) Utilizi g his prestige, Schacht also repeatedly admitted in his public statements that he asked for the support in the elections of both the Nazi Party and of Hitler. (US-615, Transcript, Afternoon Session, 2 May 1946).

On 2 August, 1932, Schacht wrote to Hitler:

"No matter where my activities lead me in the near future, even if some day you see me imprisoned in a fortress, you can always depend on me as your loyal aide." (EC-457, US-619).

Thus, Schacht consciously and deliberately supported the Nazi Party and actively aided in the seizure of power in Germany by the Fascists. Even prior to his appointment as Plenipotentiary for War Economy, and immediately after the seizure of power by the Nazis, Schacht led in planning and developing the German armaments, as follows:

a) On 17 March, 1933, Schacht was appointed President of the Reichsbank (PS-3021, US-11), and as he himself stated in a speech before his Reichsbank colleagues on 21 March 1938, the Reichsbank under his management was "none other than a national socialist institution" (Transcript, Afternoon Session, 3 May 1946).

b) In August, 1934, Schacht was appointed Reich Minister of Economy (PS-3021; US-11). His Ministry "was given the task of carrying out the economic preparation for war." (EC-128, US-623). A special decree granted S Schacht in his capacity of Reich Minister of Economy, unlimited authority.

H2756 - 0004

in the field of economy /"Reichsgesetzblatt" for 1934, Part 1, p. 565/.

c/ Making use of these powers in 1934 Schacht launched upon the execution of the "new program" developed by him /"Reichsgesetzblatt", 1934, Part I, p. 826/, and, as Schacht I myself noted in his speech of 29 November, 1938, this organization played a tremendous part in the course of Germany's rearmament ?EC-611, U -62/.

d/ For the purpose of the most effective execution of this "new program" Schacht used the property and means of those political enemies of the Nazi Regime, who either became the victims of terror or were forced to emigrate /Schacht's note to Hitler of 3 May 1939, PS-1168, US-137/.

Schacht used swindler's tactics and coercion" in an effort to acquire raw material and foreign currency for armaments" /Affidavit of Vice-President of the Reichsbank, Puhl EC-437, US-624/.

/e During the very first day of his association with Reichsbank, Schacht issued a series of decrees /27 October 1933, 23 March 1934, 19 February 1935/, which in the long run helped realize the broad program of the financing of armaments, developed by him, and with the aid of which, as he testified, he "had found the way to finance the rearmament program."

In his speech in Leipzig on 1 March, 1935, Schacht, while summing up his preceding economic and financial activities, announced "....everything that I say and do has the Fuehrer's full agreement and I shall not do or say anything which is not approved by the Fuehrer" /USSR-427/.

Having become the Plenipotentiary General for War Economy, Schacht unified under himself the leadership of the entire German economy and through his efforts the establishment of the Hitlerite war machine was accomplished.

a/ The secret law of 21 May, 1935, which appointed Schacht the Plenipotentiary General for War Economy, states as follows: "The task of the Plenipotentiary General for War Economy is to place all the economic resources in the service of warfare." "The Plenipotentiary General for War Economy within the framework of his functions is given the right to issue legal orders, deviating from the existing laws." "He is the responsible head for financing wars through the Reich Ministry and the Reichsbank." /PS-2261, US-24/.

H2756 - 0005

b/ Schacht financed German armaments through the MEFO system of promissory notes, which was a swindling venture on a national scale that has no precedent, and the success of which was dependent upon the realization of the aggressive plans of the Hitlerites. It was because of this that Schacht set 1942 as the date when the MEFO notes were to mature, and he pointed out in his speech of 29 November, 1938, the relation between "the daring credit policy" of the Reichsbank and the aims of the Hitlerite foreign policy. /EC-611, US-622/.

c/ Having made full use of his plenary powers, Schacht carefully developed and carried out a broad program of economic mobilization which allowed the Hitlerite leaders to wage war at any time considered most favorable. In particular, from the report of Schacht's deputy, Wohltat, "the preparation for mobilization carried out by the Plenipotentiary for War Economy" shows that Schacht provided to the last detail for the system of exploitation of the German economy in war time, all the way from the utilization of industrial enterprises, of raw material resources and manpower down to the distribution of 80,000,000 ration cards/EC-258, US-625/. It is significant that this report was drawn up a month after Hitler's statement at the conference of 5 November, 1937, at which Hitler set forth this concrete plan of aggression /PS-386, US-25/.

Summarizing his past activity, Schacht wrote in January 1937: "I worked out the preparation for war in accordance with the principle that the plan of our war economy must be built in peace time in such a way that there will be no necessity for any reorganization in case of war". Schacht confirmed his statement in Court/Transcript, Afternoon Session, 2 May, 1946/.

Schacht consciously and deliberately prepared Germany for war.

d/ The former Minister of War, Von Blomberg testified that: "Schacht was fully cognizant of the plans for development and increase of the German Armed forces, since he was constantly informed..... of all the financing necessary for the development of the German armed forces" /US-838/

On 31 August, 1936, Von Blomberg informed Schacht that: "The establishment of all the Air Force units must be completed by April 1, 1937, and therefore large expenditures must be entailed in 1936..."/PS-1301, US-123/.

H2756 - 0006

In the spring of 1937, Schacht participated in the military excercises in Godesberg /EC-174/.

/e In his memorandum to Hitler on May 3, 1935, entitled the "Financing of Rearmament", Schacht wrote: "A speedy fulfillment of the program for rearmament on a mass scale is the basis of German policy, and, therefore, everything else must be subordinate to this task; the completion of this task; the completion of this task, the achievement of this purpose must meet no obstacles....."/PS-1168, US-37/

In his speech on 29 November 1938, Schacht announced that Reichsbank's policy made possible for Germany to create an "unsurpassed machine, and, ir turn, this war machine made possible the realization of the aims of our policy"/ EC-611, US-622/.

One must exclude the supposition that Schacht was not informed as to what purposes these weapons were to serve since he could not but take into consideration their unprecedented scale and an obvious preference for offensive types of weapons, heavy tanks, bombers, and so on. Besides, Schacht know perfectly well that not a single country intended to wage war on Germany nor had it any reasons to do so.

a/ Schacht utilized the Military might growing under his direction to back Germany's territorial demands which grow in proportion to the increase in armaments.

Schacht testified in court that "at first he confined himself (in his demands) to the colonies which had once belonged to Germany." /Transcript, Morning Session, 3 May, 1946/.

In September, 1934, during his talk with the American Ambassador Dodd, Schacht pointed out that he "desired annexation" if possible without war, but through war, if the US would stay out of it". /EC-461, US-58/.

In 1935, Schacht announced to the American Consul Fuller: "Colonies are essential to Germany. If it is possible, we shall acquire them through negotiations; if not, we shall seize them."/ EC-450, US-629/.

Schacht admitted in Court that military pressure put upon Czechoslovakia was "in some measure the result and the fruit of his labor". /Transcript, Morning Session, 3 May, 1946/.

H2756 - 0007

b/ Schacht personally participated in the plunder of private and state property of the countries which became victims of Hitlerite aggressions.

The minutes of the conference of the Military-Economic Staff on 11 March, 1938, in which Schacht participated, state that those present were given Hitler's latest directives about the invasion of Austria. Further, the minutes state stat: "After this, at the suggestion of Schacht, it was decided that.... all the financial accounting will be made in Reichsmarks at the rate of exchange: 2 shillings for one Reichsmark"/ EC-421, US-645?.

Schacht admitted in court that he personally was in charge of the seizure of the Czechoslovak National Bank after the occupation of Czechoslovakia. /Transcript, Morning Session, 3 May, 1946/.

c/ At the beginning of 1940, Schacht offered Hitler his services for negotiations with the United States of America in regard to the discontinuance of aid to England and he informed Goering of his offer. PS-3700, US-780/.

d/ Schacht considered it his duty to greet and congratulate Hitler publicly after the signing of armistice with France, although Schacht, better than anyone else, understood the usurpatory nature of the armistice. /German Documentary, US-635/.

e/ In his letter to Funk on 17 October, 1941, Schacht suggested a more effective exploitation of occupied territory. In this case, too, Schacht acted on his own initiatice/. EC-[illegible], US-630/.

Schacht also participated in the persecution of the Jews:

a/ He testified in court that he "continued the policy of the persecution of the Jews as a matter of principle". /Transcript, Afternoon Session, 2 May, 1946/ although, he stated, "to a certain extent" it was a matter of conscience which, however, "was not serious enough to bring about a break" between him and the Nazis. (Same Transcript; also US-616).

b. In his capacity of Minister of Economy, Schacht signed a series of decrees, in accordance with which the property of the Jews in Germany was subject to plunder with impunity. (US-632 and US-616). Schacht confirmed in Court the fact that he had signed a series of anti-semitic decrees, (Transcript, Afternoon Session, 2 May, 1946.)

As to the reasons for Schacht's resignation from the post of the Minister of Economy and the Plenipotentiary General for War Economy in November, 1937,

H2756 - 0008

and also from the post of the President of the Reichsbank on 20 November, 1939, and finally from the post of the Minister without Portfolio in January 1943, the evidence submitted establishes the following:

A. The reason is not Schacht's disagreement with the economic preparation for aggressive wars.

Three weeks before leaving the Ministry of Economy and the post of Plenipotentiary General for War Economy, Schacht wrote to Goering: "...I also don't consider that my opinion can differ from yours on economic policy..." (EC-497, US-775).

In his reply Goering states: " .. You promised me your support and collaboration... You have repeated this promise many times, even after differences of opinion began to creep up between us/ EC-493, US-642./

Schacht testified in Court that Goering and he "differed in matters of procedure" /Transcript, Morning Session, 3 May, 1946/.

In the preliminary examination Goering testified that Schacht's leaving the Reichsbank "had no relation to the program of rearmament"/ US-648.

The vice-president of the Reichsbank, Puhl, confirmed that Schacht's resignation from the Reichsbank can be explained by "his desire to extricate himself from a dangerous situation" which developed as the result of Schacht' own crooked financial operations. ?EC-534, US-646/

b. The reason is not Schacht's disapproval of mass terror conducted by the Hitlerites.

The witness for the Defense, Gisevius, testified that he constantly informed Schacht of the criminal actions of the Gestapo, created by Goering, and that nevertheless, right up to the end of 1936, Schacht looked for for "Goering's support" /Transcript, Morning Session, 24 April, 1946/.

In his letter to Von Blomberg on 24 December, 1935, Schacht suggested that Gestapo apply "more cautious methods" since the open terror of the Gestapo "hinders the objectives of the armament" /Transcript, Afternoon Session, 2 May, 1946?.

On 30 January, 1937, Schacht was awarded a golden Party insignia by Hitler. ?EC-393, US-643/. As stated in an official German publication", he was able to be of greated help to the Party than if he were actually a member of the Party". /EC-460, US-617/.

H2756 - 0009

Only in 1943, having understood earlier than many other Germans, the inevitability of the failure of the Hitlerite regime, did Schacht establish contact with the opposition circles, however, doing nothing to help depose this regime. Therefore, it was not by chance that having found out these connections of Schacht, Hitler still spared Schacht's life.

It is thus indisputable established that:

1) Schacht's actively assisted in the seizure of power by the Nazis;
2) During a period of 12 years Schacht closely collaborated with Hitler;
3) Schacht provided the economic and financial basis for the creation of the Hitlerite military machine;
4) Schacht prepared Germany's economy for the waging of aggressive wars;
5) Schacht participated in the persecution of Jews and in the plunder of territories occupied by the Germans.

Therefore, Schacht's leading part in the preparation and execution of the common criminal plan is proved.

The decision to acquit Schacht is in obvious contradiction with the evidence in possession of the Tribunal.

II. The Unfounded Acquittal of Defendant Von Papen.

The verdict does not dispute the fact that von Papen prepared the way for Hitler's appointment to the post of the Reichskanzler and that he actively helped Nazis in their seizure of power.

In a speech of the 2nd of November 1933, von Papen said the following on the subject:

> "Then and there, on becoming the Reichskanzler (this was in 1932) I spoke in favor of the young and fighting movement for freedom; just as on the 30th of January I was chosen by Fate to surrender power into the hands of our Kanzler and Fuehrer, so today I must tell the German people and all those who have maintained their trust in me: mereiful God blessed Germany by granting her in these days of deep sorrow a Fuehrer like this."

/PS-2375/

It was von Papen who revoked Bruning's order dissolving the SS and the SA, thus allowing the Nazis to realize their program of mass terror. D-631).

Again it was the defendant who, by the application of brute force, did away with the Social Democrat Government of Braun and Severing. (Severing's Testimony, Transcript, Afternoon Session, 14 June, 1946, p. 11.)

H2756 - 0010

On the 4th of January, 1933, Papen had a conference with Hitler, Hess, and Himmler. (D-632).

Papen participated in the purge of the state machinery of all personel considered unreliable from the Nazi point of view; on the 21 of March, 1933, he signed a decree creating special political tribunals; he had also signed an order granting amnesty to criminals whose crimes were committed in the course of the "national revolution"; he participated in drafting the text of the order "insuring party and state unity"; and so on.

Subsequently Papen faithfully served the Hitler regime.

During the Putsch of 1934, Papen ordered his subordinate Tschirschky to appear in the Gestapo, knowing full well what awaited him there. Tshirschky as is well known, was executed. (D-684).

while Papen helped to keep the bloody murder secret from public opinion. (D-718).

Defendant played a tremendous role in helping Nazis to take possession of Austria.

Three weeks after the assassination of Dollfuss, on the 26th of July, 1934, Hitler told Papen that he was being appointed minister to Vienna, specially noting in a letter: "You have been and continue to be in possession of my full and unlimited trust." (PS-2799).

In this connection it is impossible to ignore the testimony of the American Ambassador Messerschmidt who quoted Papen as saying that "the seizure of Austria is only the first step" and that he, von Papen is in Austria for the purpose of "further weakening the Austrian Government." (US-57).

Defendant was Hitler's chief advisor in effecting plans for the seizure of Austria. It was he who proposed several tactical maneuvers, to quiet the vigilance of world opinion on the one hand, and allow Germany to conclude her war preparations, on the other.

This follows indisputable from Papen's statement to the Austrian Minister Berger-Waldeneck (PS-1760), from the Report of Gauleiter Reuner of 6 July, 1939 (US-61), from Papen's Report to Hitler of 26 August 1936, (PS-2246), from Papen's Report to Hitler of 1 September 1936 (US-67), and from a series of other documents which had been submitted in evidence.

Papen played this game until the issuance of the order for alerting the German Armed Forces for moving into Austria (US-69). He participated in arranging the conference between Hitler and Schuschnigg of 12 February 1938 (US-69).

It was Papen who in a letter to Hitler emphatically recommended that financial aid be given the Nazi organization in Austria known as the "Freedom Union", specifically for "its fight against the Jewry" (PS-2830).

Indisputable appears the fact of the Nazi seizure of Austria and of Papen's participation in this act of aggression. After the occupation of Austria, Hitler rewarded von Papen with the golden insignia of the Nazi Party /D-632/.

Neither is it possible to ignore vonPapen's role as agent provocateur when in his capacity of diplomat he was the German Ambassador to Turkey -- whenever evaluation of his activity there is made.

H2756 - 0011

The post of ambassador to Turkey was at the time of considerable importance in helping the Nazis realize their aggressive plans.

The official Nazi biographer wrote about von Papen as follows:

> "Shortly (after the occupation of Austria) the Fuehrer had need of von Papen's services again and on 18 April, 1939, he, therefore, appointed him German Ambassador in Ankara" /D-632/.

It should also be noted that for his Turkish activities, Hitler rewarded von Paper with the Knight's Cross for his "military services". /D-632/.

Thus evidence submitted establishes beyond doubt that:

1. Von Papen actively aided the Nazis in their seizure of power.

2. Von Papen used both his efforts and his connections to solidify and strengthen the Hitlerian terroristic regime in Germany.

3. Von Papen actively participated in the Nazi aggression against Austria culminating in its occupation.

4. Von Papen faithfully served Hitler up to the very and aiding the Nazi plans of aggression both with his ability and his diplomatic skill.

It therefore follows that Defendant von Papen bears considerable responsibility for the crimes of the Hitlerite regime.

For these reasons I cannot consent to the acquittal of Defendant von Papen.

III. The Unfounded Acquittal of Defendant Fritzsche.

The acquittal of Defendant Hans Fritzsche follows from the reasoning that Fritzsche, allegedly, had not reached in Termany the official position making him responsible for the criminal actions of the Hitler regime and that his own personal activity in this respect cannot be considered criminal. The verdict characterizes him as a secondary figure carrying out the directives of Goebbels and Ribbentrop, and of the Reich Press Director Dietrich.

The verdict does not take into consideration or mention the fact that it was Fritzsche who until 1942 was the director de facto of the Reich press and that, according to himself, subsequent to 1942 he became the "commander-in-chief of the German radio." /Transcript, Morning Session, 23 January, 1946/

For the correct definition of the role of Defendant Hans Fritzsche it is necessary, firstly, to keep clearly in mind the importance attached by Hitler and his closest associates (as Goering, for example) to propaganda in general and to radio propaganda in particular. This was considered one of

H2756 -0012

the most important and essential factors in the success of conducting an aggressive war.

The Germany of Hitler, propaganda was invariably a factor in preparing and conducting acts of aggression and in training the German populace to accept obediently the criminal enterprises of German fascism.

The aims of these enterprises were served by a huge and well centralized propaganda machinery. With the help of the police controls and of a system of censorship it was possible to do away altogether with the freedom of press and of speech.

The basic method of the Nazi propagandistic activity lay in the false presentation of facts. This is stated quite frankly in Hitler's "Mein Kampf"; "With the help of a skilful and continuous application of propaganda it is possible to make the people conceive even of heaven as hell and also make them consider heavenly the most miserly existence." /US-276, p. 302/.

The dissemination of provocative lies and the systematic deception of public opinion were as necessary to the Hitlerites for the realization of their plans as were the production of armaments and the drafting of military plans. Without propaganda, founded on the total eclipse of the freedom of press and of speech, it would not have been possible for German Fascism to realize its aggressive intentions, to lay the groundwork and then to put to practice the war crimes and the crimes against humanity.

In the propaganda system of the Hitler State it was the daily press and the radio that were the most important weapons.

In his court testimony, Defendant Goering named three factors as essential in the successful conduct of modern war according to the Nazi concept, namely, (1) the military operations of the armed forces, (2) economic warfare, (3) propaganda. With reference to the latter he said: "Propaganda has tremendous value, particularly propaganda carried by means of radio..... Germany has learned this through experience better than anyone else". /English Transcript, pp. 5981-5982/

With such concepts in ascendance it is impossible to suppose that the suprement rulers of the Reich would appoint to the post of the director of radio propaganda who supervised radio activity of all the broadcasting companies and directed their propagandistic content--a man they considered a secondary figure.

H2756 - 0013

The point of view of the verdict contradicts both the evidence submitted and the actual state of affairs.

Beginning with 1942 and into 1945 Fritzsche was not only Chief of the Radio Department of the Reich Ministry of Propaganda but also "Plenipotentiary for the Political Organization of Radio in Greater Germany". This circumstance is fully proven by the sworn affidavit of Fritzsche himself. /PS-3469, US-721/. It thus follows that not at all was Fritzsche merely "one of the twelve departmental chiefs in the Ministry of Propaganda" was acquired responsibility for all radio propaganda only toward the end of the war, as the verdict asserts.

Fritzsche was the political director of the German radio up and into 1945 i.e. up to the moment of German defeat and capitulation. For this reason, it is Fritzsche who bears responsibility for the false and provocative broadcasts of the German radio during the years of the war.

As chief of the Press Section inside Germany it was also Fritzsche who was responsible for the activity of the German daily press consisting of 2300 newspapers. It was Fritzsche who created and perfected the Information Section winning from the Reich Government for the purpose an increase in the subsidy granted the newspapers from 400,000 to 4,000,000 marks. Subsequently Fritzsche participated energetically in the development of the propaganda campaigns preparatory to the acts of aggression against Czecho-slovakia and Poland. /Transcript, Morning Session, 23 January, 1946/. A similar active propaganda campaign was conducted by the Defendant prior to the attach on Yugoslavia as he himself admitted on oath in court /Transcript, Morning Session, 23 January, 1946/.

H2756 - 0014

H2756 - 0015

Fritzsche was informed of the plan to attack the Soviet Union and was put "au courant" the military intentions at a conference with Rosenberg. /PS-1039, US-146, Rosenberg's Written Report to Hitler on the Subject of Preliminary Drafts on Eastern European Problems/.

Fritzsche headed the German press campaign falsifying reports of Germany's aggressive war against France, England, Norway, the Soviet Union, the USA, and the other states.

The assertion that Fritzsche was not informed of the war crimes and the crimes against humanity then being perpetrated by the Hitlerites in the occupied regions does not agree with the facts. From Fritzsche's testimony in court it is obvious that already in May 1942, while in the Propaganda Section of the 6th Army, he was aware of Hitler's decree ordering execution for all Soviet political workers and Soviet intellectuals, the so-called "Commissar Decree". It is also established that already at the beginning of hostilities Fritzsche was fully aware of the fact that the Nazis were carrying out their decision to do away with all Jews in Europe. For instance, when commenting on Hitler's statement that "among results of the war there will be the annihilation of the Jewish race in Europe" /p.248 of the transcript/. Fritzsche stated that: "As Fuehrer predicted it will occur in the event of war in Europe, the fate of the European Jewry turned out to be quite sad." /p.3231 of the transcript/. It is further established that the Defendant systematically preached the anti-social theory of race hatred and characterized peoples ibhabiting countries victimized by aggression as "subhumans" /Transcript, Morning Session, 26 April, 1946, p.83; and of the afternoon session, pp. 1-2/.

When the fate of Nazi Germany became clear, Fritzsche came out with energetic support of the Defendant Martin Bormann and of other fanatical Hitler adherents who organized the undercover fascist association, the so-called "Werewolf."

On the 7th of April, 1945, for example, in his last radio address, Fritzsche agitated for all the civilian population of Germany to take active part in the activities of this terroristic Nazi undergroup organization.

He said: "Let no one be surprised to find the civilian population, wearing civilian clothers, still continuing the fight in the regions already

H2756 - 0016

occupied and even after occupation has taken place. We shall call this phenomenon "Werewolf" since it will have arisen without any preliminary planning and without a definite organization, out of the very instinct of life." /USSR-496/

In his radio addresses Fritzsche welcomed the German use of the new terror weapons in conducting the war, specifically the use of the "V" rockets. On receiving a plan for the introduction of bacterial warfare he immediately forwarded it to the OKW for acceptance. /USSR-484, Evidence submitted during the Afternoon Session, 28 June, 1946/.

I consider Fritzsche's responsibility fully proven. His activity had a most basic relation to the preparation and the conduct of aggressive warfare as well as to the other crimes of the Hitler regime.

H2756 - 0017

IV. Concerning the sentence of the defendant Rudolf Hess. The Judgment of the Tribunal correctly and adequately portrays the outstanding position which Rudolf Hess occupied in the leadership of the Nazi party and state. He was indeed Hitler's closest personal confident and his authority was exceedingly great: In this connection it is sufficient to quote Hitler's decree appointing Hess as his Deputy: "I hereby appoint Hess as my deputy and give him full power to make decisions in my name on all questions of Party Leadership (Transcript 7 February 1946, afternoon.)

But the authority of Hess was not only confined to questions of Party leadership.

The official NSDAP publication "Party Year Book for 1941", which was admitted as USA Exhibit No. 255, PS-3163, states that:... "In addition to the duties of Party leadership, the Deputy of the Fuehrer has far-reaching powers in the field of the State. These [illegible]/participation in national and State legislation, including the preparation of Fuehrer's order. The Deputy of the Fuehrer in this way validates the conception of the Party... Approval of the Deputy of the Fuehrer of proposed appointments for official and labor service leaders. Hence, securing the influence of the Party over the self-government of the municipal units.' (Doc. USA-255, PS-3163)

Hess was an active supporter of Hitler's aggressive policy. The crimes against peace committed by him are dealt with in sufficient detail in the Judgment. The mission undertaken by Hess in flying to England should be considered as the last of these crimes, as it was undertaken in the hope of facilitating the realization of aggression against the Soviet Union by temporarily restraining England from fighting.

The failure of this mission led to Hess's isolation and he took no direct part in the planning and commission of subsequent crimes of the Hitler regime. There can be no doubt, however, that Hess did everything possible for the preparation of these crimes.

Hess, together with Himmler, occupied the role of creator of the SS police organizations of German fascism which afterwards committed the most ruthless crimes against humanity. The defendant clearly pointed out the "Special tasks" which faced the SS formations on occupied territories.

When the Waffen SS were being formed Hess issued a special

H2756 - 0018

order through the Party Chancellory which made aiding the conscription of Party members into these organizations by all means compulsory for Party organs: He outlined the tasks set before the Waffen-SS as follows:

"The units of the Waffen-SS composed of National Socialists are more suitable than other armed units for the specific tasks to be solved in the occupied Eastern territories due to the intensive training in regard to questions of race and nationality. (GB-267, 3245-PS)

As early as 1934 the Defendant initiated a proposal that the so-called SD under the Reichsfuehrer SS (Security Service) be given extraordinary powers and thus become the leading force in Nazi Germany.

On the 9th of June 1934 Hess issued a decree in accordance with which the "Security Service of the Reichsfuehrer SS" was declared to be the "sole political news and defense service of the Party". (GB-257).

Thus the Defendant played a direct part in the creation and consolidation of the systen of special police organs which were being prepared for the commission of crimes on occupied territories.

We find Hess to have always been an advocate of the man-hating "master race" theory. In a speech made on the 16th January 1937 while speaking of the education of the German nation, Hess pointed out: "Thus, they are being educated to put Germans above the subjects of a foreign nation, regardless of their positions or their origin." (GB 253, 3124-PS).

Hess signed the so-called "Law for the Protection of Blood and Honour" on the 15th September 1935 (USA 300, 3179-PS). The body of this law states that "the Fuehrer's deputy is authorized to issue all necessary decrees and directives". for the practical realization of the "Nurnberg decrees."

On the 14th of November 1935, Hess issued an ordinance under the Reich citizenship law in accordance with which the Jews were denied the right to vote at elections or hold public office (GB 258; 1417-PS).

On the 20th of May 1938 a decree signed by Hess extended the Nurnberg laws to Austria (GB-259, 224-PS).

On October 12, 1939 Hess signed a decree creating the administration of Polish occupied territories (Reichsgesetzblatt N 210, 1939 p 2077). Article 2 of this decree gave the defendant Frank the power of dictator.

There is sufficiently convincing evidence showing that this Defendant did not limit himself to this general directive which introduced into the occupied Polish territories a regime of unbridled terror. As is shown in the letter of the Reichsminister of Justice to the Chief of the Reichschancellory dated April 17, 1941, Hess was the initiator in the formation of special "penal laws" for Poles and Jews in occupied Eastern territories. The role of this Defendant in the drawing up of these "laws" is characterized by the Minister of Justice in the following words:

"In accordance with the opinion of the Fuehrer's deputy I started from the point of view that the Pole is less susceptible to the infliction of ordinary punishment.... Under these new kinds of punishment, prisoners are to be lodged outside prisons in camps and are to be forced to do heavy and heaviest labour.... The introduction of corporal punishment which the Deputy of the Fuehrer has brought up for discussion has not been included in the draft. I can not agree to this type of punishment.....The procedure for enforcing prosecution has been abrogated, for it seemed intolerable that Poles or Jews should be able to instigate a public indictment. Poles and Jews have also been deprived of the right to prosecute in their own names or join the public prosecution in an action.... From the very beginning it was intended to intensify special treatment in case of need: When this necessity became actual a supplementary decree was issued to which the Fuehrer's deputy refers to in his letter.... (GB 268 R-96).

Thus, there can be no doubt that Hess together with the other major war criminals is guilty of crimes against humanity.

Taking into consideration that among political leaders of Hitlerite Germany Hess was third in significance and played a decisive role in the crimes of the Nazi regime, I consider the only justified sentence in his case can be - death.

H2756 - 0019

H2756 - 0020

V. Incorrect Judgment With Regard to the Reich Cabinet

The Prosecution has posed before the Tribunal the question of declaring the Reich Cabinet a criminal organization. The verdict rejects the claim of the Prosecution, unfoundedly refusing to declare Hitler Government a criminal organization.

Wish such a decision I cannot agree.

The Tribunal considers it proven that the Hitlerites have committed innumerable and monstrous crimes.

The Tribunal also considers it proven that these crimes, were as a rule committed intentionally and on an organized scale, according to previously prepared plans and directives /"Plan Barbarossa", "Night and Fog", "Bullet", etc./

The Tribunal has declared several of the Nazi mass organizations criminal the organizations founded for the realization and putting to practice the plans of the Hitler Government.

In view of this it appears particularly untenable and rationally incorrect to refuse to declare the Reich Cabinet, the directing organ of the State with a direct and active role in the working out of the criminal enterprises, a criminal organization. The members of this directing staff had great power, each headed an appropriate government agency, each participated in preparing and realizing the Nazi program.

In confirmation it is deemed proper to cite several facts:

1. Immediately after the Nazi ascent to power -- on the 24th of March, 1933 -- there was a law passed entitled "The Law of Defense of the People and the State" whereby the Reich Cabinet, besides the Reichstag, received the right of issuing new legislature.

On the 26 of May 1933 the Reich Government issued a decree ordering the confiscation of the property of all Communist organizations and on the 14th of June, the same year, it also confiscated the property of the Social Democrat organizations. On the 1st of December, 1933, the Reich Government issued the law "Ensuring Party and State Unity".

Following through its program of liquidating democratic institutions, in 1934 the Government passed a law of the "Reconstruction of the Reich" whereby democratic elections were abolished for both central and local representative

bodies. Reichstag thereby became an institution without functional meaning. /Transcript, Afternoon Session, November 22, 1945, pp. 23-25/.

By the law of 7 April 1933 and others, all Reich government employees, including judges, ever noted for any anti-Nazi tendencies or ever having belonged to leftist organizations, as well as all Jews, were to be removed from the government service and substituted by Nazis. In accordance with the "Basic Positions of the German Law on Government Employees" of the 26 of January 1937, "the inner harmony of the official and the Nazi party is a necessary presupposition of his appointment to his post... government employees must be the executors of the will of the National Socialist State, directed by the NSDAP" /Defense Exhibit No. 28, p.59/.

On the 1st of May, 1934, there was created the Ministry of Education instructed to train students in the spirit of militarism, of racial hatred, and in terms of reality thoroughly falsified by Nazi ideology. 2073-2076/.

Free trade unions were abolished, their property confiscated, and the majority of the leaders jailed.

To suppress even a semblance of resistance the Government created the Gestapo and the concentration camps. Without any trial or even a concrete charge hundreds of thousands of persons were arrested and then done away with merely on a suspicion of an anti-Nazi tendence.

There were issued the so-called Nurnberg Laws against the Jews. Hess and Frick, both members of the Reich Government, implemented these by additional decrees.

It was the activity of the Reich Cabinet that brought on the war which took millions of human lives and caused inestimable damage in property and in suffering borne by the many nations.

On the 4th of February 1938, Hitler organized the Secret Council of Ministers defining its activity as follows: "To aid me by advice on problems of foreign policies I am creating this secret council" /"Reichsgesetzblatt" for 1938, Part I, p.112, PS-2031/. The foreign policy of the Hitler Government was the policy of aggression. For this reason the members of the secret council should be held responsible for this policy. There were attempts in court to represent the secret council as a fictitious organization, never actually functioning. This however, is an inadmissible position. It is

H2756 - 0021

sufficient to recall Rosenberg's letter to Hitler where the former insistently tried to be appointed member of the secret council of ministers -- to appreciate fully the significance of the council.

Even more important practically in conducting aggressive warfare was the Reich Defense Council headed by Goering. The following were members of the Defense Council, as is well known: Hess, Frick, Funk, Keitel, Raeder, Lammers /PS-2194 and 2018/.

Goering characterized the function of the Defense Council and its role in war preparations as follows, during the court session of 23 June 1939: "The Defense Council of the Reich was the deciding Reich organ on all questions concerning preparation for war". /PS-3787, US-782/.

At the same time Goering exphasized the fact that "the meetings of the Defense Council always took place for the purpose of making the most important decisions". From the minutes of these meetings, submitted as evidence by the Prosecution, it is quite clear that the Council made very important decisions indeed. The minutes also show that other cabinet ministers sometimes took part in the meetings of the Council for the Defense alongside the members of the Council when war enterprises and war preparedness were discussed.

For example, the following Cabinet ministers took part in the meeting of 23 June 1939: of Labor, of Food and Agriculture, of Finance, of Communication, and a number of others, while the minutes of the meeting were sent to all the members of the cabinet. ?US-782/.

The verdict of the Tribunal justly points out certain peculiarities of the Hitler Government as the directing organ of the state, namely: the absence of regular cabinet meetings, the occasional issuance of laws by the individual ministers having unusual independence of action, the tremendous personal power of Hitler himself. These peculiarities do not refute but on the contrart further confirm the conclusion that the Hitler Government is not an ordinary rank-of-the-file cabinet but a criminal organization.

Certainly Hitler had an unusual measure of personal power but this in no way frees of responsibility the members of his cabinet who were his convinced followers and the actual executors of his program until and when the day of reckoning arrived.

I consider that there is every reason to declare the Hitler Government a criminal organization.

H2756 - 0022

VI. Incorrect Judgment With Regard to the General Staff and the OKW

The verdict incorrectly rejects the accusation of criminal activity directed against the General Staff and the OKW.

The rejection of the accusation of criminal activity of the General Staff and of the OKW contradicts both the actual situation and the evidence submitted in the course of the trial.

It has been established beyond doubt that the leadership corps of the Armed Forces of Nazi Germany together with the SS-Party machine, represented the most important agency in the preparing and realizing the Nazi aggressive and man-hating program. This was constantly and forcefully reiterated by the Hitlerites themselves in their official bulletins meant for the officer personnel of the armed forces. In the Nazi Party Bulletin called "Politics and the Officer in the III Reich" it is quite clearly stated that the Nazi regime is founded on "two pillars: the Party and the Armed Forces. Both are forms of expression of the same philosophy of life", "the tasks before the Party and the Armed Forces are in an organic relationship to each other and each bears the same responsibility.... both these agencies depend on each other's success or failure" /PS-4060, US-928, p.4/

This organic interrelationship between the Nazi Party and the SS on the one hand and the Nazi Armed Forces on the other hand, was particularly evident among the upper circles of military hierarchy which the Indictment groups together under the concept of criminal organization -- that is, among the members of the General Staff and the OKW.

The very selection of members of the Supreme Command of the Army in Nazi Germany was based on the criteria of their loyalty to the regime and their readiness not only to pursue aggressive militaristic policies but also to fulfill such special directives as related to treatment meted out to prisoners-of-war and to the civilian populations of occupied territories.

The leaders of the German Armed Forces were not merely officers who reached certain levels of the military hierarchy. They represented, first of all, a closely-knit group which was entrusted with the most secret plans of the Nazi leadership. Evidence submitted to the Tribunal has fully confirmed the contention that the military leaders of Germany justified this trust completely and that they were the convinced followers and ardent executors of

H2756 -0023

H2756 – 0024

Hitler's plans.

It is not accidental that at the head of the Air Force stood the "second man" of the Nazi Reich, namely Goering; that the commander-in-chief of the Navy was Doenitz, subsequently designated by Hitler to be the latter's successor; that the command of the Ground Forces was concentrated in the hands of Keitel who signed the major part of the decrees concerning the execution of the prisoners-of-war and of the civilians in occupied territories.

Thus the comparisons made with the organization of the supreme commands in Allied countries cannot be considered valid. In a democratic country, not one self-respecting military expert would agree to prepare plans for mass reprisals and merciless killings of prisoners-of-war side by side with plans of the purely military and strategic character.

Meanwhile it is precisely such matters that occupied the supreme command of the General Staff and of the OKW in Nazi Germany. The commission by them of the heaviest crimes against peace, of the war crimes, and of the crimes against humanity is not denied but is particularly emphasized in the verdict of the Tribunal. And yet the commission of these crimes has not brought the logical conclusion.

The verdict states:

> "They have been a disgrace to the honorable profession of arms. Without their military guidance the aggressive ambitions of Hitler and his fellow Nazis would have been academic and sterile..."

And subsequently:

> "Many of these men have made a mockery of the soldier's oath of obedience to military orders. When it suits their defense they say they had to obey; when confronted with Hitler's brutal crimes, which are shown to have been within their general knowledge, they say they disobeyed. The truth is they actively participated in all these crimes, or sat silent and acquiescent, witnessing the commission of crimes on a scale larger and more shocking than the world ever had the misfortune to know.. This must be said."

All these assertions in the verdict are correct and are based on numerous and reliable depositions. The only thing that remains incomprehensible is the reasoning which does not recognize as criminal that "hundred of higher ranking officers" who caused the world and their own country so much sorrow, the reasons backing the decision not to declare the organization criminal.

The verdict advances the following reasons for the decision, reasons quite contradictory to the facts:

H2756 - 0025

a) That the crimes were committed by representatives of the General Staff and of the OKW as private individuals and not as members of a criminal conspiracy.

b) That the General Staff and the OKW were merely weapons in the hands of the conspirators and interpreters or executors of the conspirators' will.

Numerous evidence disputes such conclusions.

1. The leading representatives of the General Staff and of the OKW, along with a small circle of the higher Hitlerite officials, were called upon by the conspirators to participate in the development and the realization of the plans of aggression, not as passive functionaries, but as active participants in the conspiracy against peace and humanity.

Without their advice and active cooperation, Hitler could not have solved these problems.

In the majority of cases their opinion was decisive. It is impossible to imagine how the aggressive plans of Hitler's Germany could have been realized had it not been for the full support given him by the leading staff members of the armed forces.

Least of all did Hitler conceal his criminal plans and motivations from the leaders of the Supreme Command.

For instance, while preparing for the attack on Poland, as early as 29 May, 1939, at a conference with the high military commanders of the new Reich Chancellory, he stated:

"For us the matter consists of the expansion of 'Lebensraum' to the East."

"Thus the question of sparing Poland cannot be considered, and, instead, we have to consider the decision to attack Poland at the first opportunity." (L-79).

Long before the seizure of Czechoslovakia, in a directive of 30 May, 1938, Hitler, addressing the representatives of the Supreme Command, cynically stated:

"From the military and political point of view, the most favorable time is a lightning attack on the basis of some incident, by which Germany will have been strongly provoked and which will morally justify the military measures to at least part of the world opinion." (PS-388).

Prior to the invasion of Yugoslavia, in a directive dated 27 March, 1941, addressing the representatives of the High Command, Hitler wrote:

"Even if Yugoslavia declares its loyalty, it must be considered an enemy and must, therefore, be smashed as soon as possible." /PS-1746/

While preparing for the invasion of USSR, Hitler invited the representatives of the General Staff and the OKW to help him work out the related plans and directives not at all as simply the military experts.

H2756 - 0026

H2756 - 0027

In the instructions to apply propaganda in the region "Barbarossa," issued by the OKW in June, 1941, it is pointed out that:

"For the time we should not have propaganda directed at the dismemberment of the Soviet Union". /PS-446/

As early as 13 May, 1941, OKW ordered the troops to use any terrorist measures against the civilian populations of the temporarily occupied regions of the Soviet Union."

Here a special stipulation read: "To confirm only such sentences as are in accordance with the political intentions of the Leadership." /G-50/

2. OKW and the General Staff issued the most brutal decrees and orders for relentless measures against the unarmed peaceful population and the prisoners of war.

In the "decree of special liability to punishment in the region "Barbarossa" while preparing for the attack upon the Soviet Union, the OKW abolished beforehand the jurisdiction of the military courts, granting the right of repressions over the peaceful population to individual officers and soldiers.

It is particularly stated there that:

"Crimes of hostile civilians are excluded from the jurisdiction of the court martials....", "Suspected elements must be immediately delivered to the officer. The latter will decide whether they should be shot.....", "it is absolutely forbidden to hold suspects for the purpose of bringing them to trial." There are also provisions for "the most extreme measures, and, in particular, 'Measures for mass violence', if circumstances do not permit the rapid detection of the guilty."

In the same Decree of the OKW the guarantee of impunity was assured in advance to the military criminals from the service personnel of the German Army. It states there as follows: "The bringing of suits of actions, committed by officials of the Army and by the service personnel against hostile civilians is not obligatory even in cases where such actions at the same time constitute military crimes or offences....."

In the course of the war the High Command consistently followed this policy, increasing its terroristic actionswith regard to prisoners of war and the peaceful populations of occupied countries.

H2756 - 0028

The OKW directive of 16 September, 1941, states:

"It is important to realize that human life in the countries to which this refers, means nothing, and that intimidating action is possible only through the application of unusual brutality" /[illegible]-98/.

Addressing the commanders of the army groups on 23 July, 1941, the OKW simply briefed them as follows: "It is not in the demand for additional security detachments, but in the application of appropriate draconic measures that the commanding officers must use to keep order in the regions under their jurisdiction." /PS-459/.

The OKW directive of 16 December 1941, states:

"The troops... have the right and are obliged to apply....any measures whatsoever also against women and children if this contributes to success.... /USSR-16/.

H2756 - 0029

Among the most brutal OKW directives concerning the treatment of prisoners of war one must consider the order entitled "Night and Fog". The reasons for resorting to capital punishment for prisoners of war were offences, which accordint to international conventions, generally should not carry any punishment; for example, escape from the camp.

The order states:

"Penalty for such offences, consisting of loss of freedom and even a life sentence is a sign of weakness. Only death sentence or measures which entail ignorance of the fate of the guilty by local population will achieve real effectiveness. /I-90, US-224, Transcript, Afternoon Session 25 January, 1946/

In the course of the present trial a great deal of evidence of application of this order has been submitted. One of the example of this kind of crime is the murder of 50 officer-pilots. The fact that this crime was inspired by the High Command cannot be doubted.

OKW also issued an order for the destruction of the "Commando" units. The original order was submitted to the Court /PS-498, US-501/ According to this order, officers and soldiers of the "Commando" units had to be shot, except incases when they were to be questioned, after which they were shot in any case.

This order was unswervingly carried out by the commanding officers of Army units. In June 1944 Rundstedt, the commander-in-chief of the German troops in the West, reported that Hitler's order in regard to "the treatment of the Commando groups of the enemy is still being carried out" /PS-531, US-550/

3. <u>The High Command, along with the SS and the Police, is guilty of the most brutal police actions in the occupied regions.</u>

The instructions relating to special regions, issued by OKW on 13 March 1941 contemplated the necessity of synchronizing the activities in occupied territories between the army command and the Reichsfuehrer of the SS. As is seen from the testimony of the chief of the 3d Department of RSHA and who was concurrently chief of the Einsatzgruppe "D", Otto Ohlendorf, and of the chief of the VI Department of RSHA, Walter Schellenberg, in accordance with

H2756 - 0030

OKW instructions there was an agreement made between the general staff and the RSHA about the organization of special "operational groups" of the Security Police and SD - "einsatzgruppen", assigned to the appropriate army detachments.

Crimes committed by the einsatzgruppen on the territory of the temporarily occupied regions are countless. The einsatzgruppen were acting in close contact with the commanding officers of the appropriate army groups.

The following excerpt from the report of Einsatzgruppe "A" is extremely characteristic as evidence:

"...among our functions as the establishment of personal lisiaon with the commanding officer both at the front and in the rear. It must be pointed out that the relations with the army were of the best, in some cases very close, almost hearty, as , for instance, the commander of the tank group, Colonel-General Hoppner" /L-180/.

4. The representatives of the High Command acted in all the echelons of the army as members of a criminal group.

In spite of the violation of international law and of the customs of war, the directives of the OKW and of the General Staff and the command of individual army units byt were applied in life and were augmented by even more brutal orders issued as implementation to those directives.

In this connection it is characteristic to note the directive of Fieldmarshal von Reichenau, Army group commander, addressed to his soldiers: "The soldier in the eastern territories is not only a warrior skilled in the art of warfare but a bearer of a merciless national idology." And elsewhere, calling for the extermination of the Jews, Reichnau wrote: "Thus the soldier must be in full cognizance of the necessity for harsh and just revenge on those sub-humans / the Jews". (USA-556).

As another example the order of Fieldmarshal von Mannstein addressed to his soldiers can be referred to. On the basis of the "political aims of the war" the Fieldmarshal cynically appealed to his soldiers to wage the war in violation of the "recognized laws of warfare in Europe" (USA-927).

Thus, in the course of the hearing of evidence it has been proven beyond all doubt that the General Staff and the Supreme Command of the

H2756 - 0031

Hitlerite Army comprised a highly dangerous criminal organization.

* * * * * *

I consider it my duty as a Judge to draw up my dissenting opinion concerning those important questions in which I disagree with the decision adopted by the members of the Tribunal.

Soviet Member IMT

Major General Jurisp rudence

".....1946 I.T. Nikitchenko

H-2756

DISSENTING

ENGLISH

DISSENTING ENGLISH

H2756 – 0032

H2756 – 0033

Defense Counsel

H2756 - 0034

Defense Counsel